

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

CASE NO. 2:10-CV-01087

\$88,029.08, MORE OR LESS,
IN UNITED STATES CURRENCY,
Defendant.

Katherine Anne Hoover and
John F. Tomasic,
Interested Parties
(No pending criminal charges).

The proceedings for the deposition of
KATHERINE ANNE HOOVER scheduled in the above-entitled
action, before Karon L. Vorholt, a Certified Court
Reporter and Notary Public within and for the State of
West Virginia, on the 30th day of August 2011, to
commence at 10:00 a.m., at the Office of the United
States Attorney, 300 Virginia Street, East, Robert C.
Byrd United States Courthouse, Room 4000, Charleston,
West Virginia, pursuant to notice.

*Karon L. Vorholt, CCR
DeMuth Court Reporting, LLC
Certified Court Reporters
Post Office Box 701
Dunbar, West Virginia 25064
304.766.8708*

APPEARANCES: FRED B. WESTFALL, JR.
Assistant United States Attorney
Office of the United States Attorney
300 Virginia Street, East
Robert C. Byrd United States Courthouse
Room 4000
Post Office Box 1713
Charleston, West Virginia 25326

I N D E X

PROCEEDINGS 4-10

E X H I B I T S

HOOVER EXHIBITS

MARKED

No. 1, Letter Dated August 29, 2011, with Attached "Activity Report"	7
No. 2, Four-page Order and Notice Dated August 12, 2011	7
No. 3, Four-page Order Dated August 25, 2011	8

Reporter's Certificate 11/12

1 MR. WESTFALL: Today is August 30, 2011.

2 It's approximately 10:00 a.m.

3 We are here for Katherine Anne Hoover,
4 M.D.'s deposition as ordered by the Court pursuant
5 to a previous order entered on August 12, 2011.
6 And also reinforced by a further Court order of
7 August 25, 2011.

8 I received a -- or excuse me. Our
9 office received a fax last night after
10 nine o'clock according to our fax machine.

11 We received a fax from Dr. Hoover
12 regarding the deposition.

13 It did not indicate that she intended to
14 appear for the deposition today. And I'll make a
15 copy of that letter, with a copy of the fax
16 receipt, as Exhibit No. 1.

17 We also received a telephone call from
18 Dr. Hoover at about 9:35 this morning.

19 In that telephone call, which came
20 through our general switchboard at the office,
21 Dr. Hoover called and specifically asked the
22 operator to direct her telephone call to go to my
23 Voice Mail.

1 And she did not ask to speak to me. She
2 specifically asked to be directed to my
3 Voice Mail.

4 In the Voice Mail message which she left
5 for me, she indicated a phone number where I could
6 call her. The phone number apparently is in the
7 Bahamas.

8 I attempted to make contact using that
9 telephone number. But we were unable to do so
10 because our phones are restricted. We cannot make
11 International calls.

12 Nevertheless the fact is Dr. Hoover
13 did not appear for her deposition in
14 West Virginia, at our office, as directed by the
15 previous orders of the Court.

16 She is not physically present here for
17 her deposition today. And her deposition will not
18 be able to be completed practically without her
19 presence, because we'd be unable to question her
20 regarding various documents concerning the case.

21 Accordingly since we could not make
22 telephone contact with her at the number which she
23 gave, which apparently is a number based in the

1 Bahamas -- and because she's not present here
2 today for the deposition, we're going to conclude
3 this proceeding at this time. And then take the
4 matter up with the Court.

5 (WHEREUPON, the proceedings
6 concluded at 10:08 a.m., and
7 resumed at 10:12 a.m.)

8 MR. WESTFALL: For the purposes of completing
9 the record, I'm going to now attach Exhibit
10 No. 1, which is a copy of the fax that I received
11 -- that our office received last night at
12 approximately 9:57 p.m., according to the
13 Activity Report from the fax machine.

14 Just to make sure it's clear, the
15 second page of Exhibit No. 1 is the
16 Activity Report from our fax machine.

17 The only redactions that have been made
18 have been for the telephone numbers for various
19 faxes transmitted to our office during the period
20 accompanied by the report.

21 I will note for the purposes of the
22 record that the last entry on the Activity Report
23 is the fax we received from Dr. Hoover. Again, it

1 was last night at 9:57 p.m.

2 There was no phone number on the
3 Activity Report for the fax. That number had been
4 blocked out by someone.

5 So all we have is just the time entry,
6 showing that it's one page and the length of the
7 time that it took for it to be faxed. And so
8 that's Exhibit No. 1.

9 (WHEREUPON, the letter dated
10 August 29, 2011, with attached
11 "Activity Report" was marked for
12 identification as Hoover Exhibit
13 No. 1 and hereto attached.)

14 MR. WESTFALL: Exhibit No. 2 is a copy of an
15 Order entered on August 12, 2011 by United States
16 Magistrate Mary Stanley which indicated that
17 Dr. Hoover was to be physically present at our
18 office today at ten o'clock for her deposition.

19 (WHEREUPON, the four-page
20 Order and Notice dated August 12,
21 2011 was marked for identification
22 as Hoover Exhibit No. 2 and hereto
23 attached.)

1 MR. WESTFALL: And Exhibit No. 3 is an order
2 entered on August 25, 2011 by Judge Copenhaver,
3 which also indicated that Dr. Hoover was to be
4 physically present at her deposition today here in
5 our office.

6 (WHEREUPON, the four-page
7 Order dated August 25, 2011 was
8 marked for identification as Hoover
9 Exhibit No. 3 and hereto attached.)

10 MR. WESTFALL: And those are the three
11 exhibits to the deposition.

12 Again, we attempted to make telephone
13 contact with Dr. Hoover. But we are unable to
14 contact her in the Bahamas due to the phone
15 restrictions in our office.

16 But nevertheless she is not physically
17 present here today for her deposition.

18 (WHEREUPON, the proceedings
19 concluded at 10:15 a.m., and
20 resumed at 10:21 a.m.)

21 MR. WESTFALL: As I mentioned before, we did
22 receive a telephone call from Dr. Hoover this
23 morning. She directed our receptionist to have it

1 placed directly into my Voice Mail, as opposed to
2 having the operator send the call to me directly.

3 Dr. Hoover specifically requested that
4 the call go to my Voice Mail.

5 And now we're going to play the
6 Voice Mail for the purposes of the record, so that
7 the Court will have a record of what Dr. Hoover
8 said in the Voice Mail.

9 "Good morning, Fred. I'm calling to
10 make sure that you got my letter.

11 I am available by phone at
12 (242) 322-1191. This is Dr. Katherine Hoover.
13 Bye-bye."

14 Based upon that Voice Mail, we made
15 two telephone calls.

16 The first call which we made this
17 morning was to (242) 328-4014, which is a
18 telephone number that Dr. Hoover had on the letter
19 which she faxed to us at 9:57 last night.

20 Again we're restricted, and unable to
21 make an International call. And apparently this
22 was a phone number in the Bahamas, so we could not
23 make contact.

1 We also called the number in the
2 Voice Mail (242) 322-1191. And, again, we
3 received an indication that we could not make the
4 telephone call, that our office was restricted
5 because it was an International call.

6 So we could not make contact with
7 Dr. Hoover by telephone at either number.

8 Again, Dr. Hoover's presence was ordered
9 by the Court at this deposition. She was to be
10 physically present.

11 And it is not feasible to depose her
12 without her being physically present due to the
13 various documents that would have to be discussed
14 during the course of the deposition.

15 And we will retain the Voice Mail, if
16 the Court should like to hear it personally. But
17 we have played it so it could be transcribed and
18 made part of the record.

19 (WHEREUPON, the proceedings
20 were concluded at 10:25 a.m.)

21
22
23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, Karon L. Vorholt, a Certified Court Reporter and Notary Public within and for the county and state aforesaid, duly Commissioned and qualified, do hereby certify that the foregoing proceedings were taken by me and before me at the time and place and for the purpose specified in the caption hereof.

I do further certify it was transcribed under my direction and supervision, and this is a true record of the proceedings.

I do further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or

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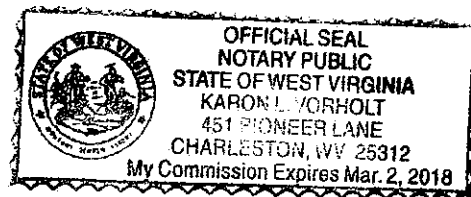
counsel or financially interested in the action or interested directly or indirectly in the matter in controversy.

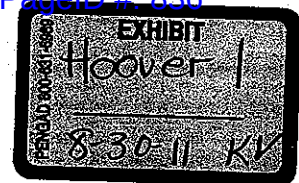
Given under my hand this 30th day of August 2011.



Notary Public

My commission expires March 2, 2018.





KATHERINE A. HOOVER MD
c/o Dr. Norman Gay
N-3222
West Bay Medical Clinic
West Bay Street
Nassau, N.P., Bahamas
242-328-4014

August 29, 2011

AUSA Fred Westfall
United States' Attorney's Office for the
Southern District of West Virginia
300 Virginia St. East
Suite 4000
Charleston, West Virginia 25301

Dear Mr. Westfall:

Re: 2:10-cv-1087 and the requested deposition of Dr. Hoover

I received your notice of deposition today. Things have been chaotic with Hurricane Irene and other personal challenges. I sent a Motion to the Court regarding my Fifth Amendment rights. From my research, subpoenas are only valid for the fifty contiguous states.

Since Judge Copenhaver ruled on Subject Matter jurisdiction, we will file an Interlocutory appeal with the Fourth Circuit within the required thirty days and request a stay of all proceedings. We certainly believe that Judge Copenhaver has misinterpreted the evidence supporting the control of medical practice within the States and the medical community. The current vendetta against doctors will result in more crime, more suffering and more deaths. The sensible approach would be to drop your misguided criminal investigation against me and the medical practice formerly located in Williamson and work on a plan that will improve Southern West Virginia. Putting more people in jail solves nothing and causes great suffering; putting more people to work improves everything. That was our goal for all of our patients and we succeeded with many.

Sincerely,

Katherine A. Hoover MD

Katherine A. Hoover MD

 *** ACTIVITY REPORT ***

ST. TIME	CONNECTION TEL	CONNECTION ID	NO.	MODE	PGS.	RESULT
*08/29 14:22			0571	TRANSMIT ECM	10	OK 03'2
*08/29 15:01			8483	AUTO RX ECM	3	OK 00'4
*08/29 15:05			0572	TRANSMIT	0	NG 00'0
					0	STOP
*08/29 15:06			0573	TRANSMIT ECM	3	OK 00'3
*08/29 15:29			8484	AUTO RX G3	0	NG 00'4
					0	#005
*08/29 15:32			8485	AUTO RX G3	0	NG 00'4
					0	#005
*08/29 15:35			8486	AUTO RX G3	0	NG 00'4
					0	#005
*08/29 15:39			8487	AUTO RX G3	0	NG 00'4
					0	#005
*08/29 15:41			8488	AUTO RX G3	0	NG 00'4
					0	#005
08/29 15:44			8489	AUTO RX G3	0	NG 00'4
					0	#005
08/29 15:47			8490	AUTO RX G3	0	NG 00'4
					0	#005
08/29 15:51			8491	AUTO RX G3	0	NG 00'4
					0	#005
08/29 15:55			8492	AUTO RX G3	0	NG 00'4
					0	#005
08/29 15:58			8493	AUTO RX G3	0	NG 00'4
					0	#005
08/29 16:01			8494	AUTO RX G3	0	NG 00'4
					0	#005
08/29 16:05			8495	AUTO RX G3	0	NG 00'46
					0	#005
08/29 16:09			8496	AUTO RX G3	2	NG 02'00
					2	
08/29 16:12			8497	AUTO RX G3	3	OK 02'31
08/29 17:16			8498	AUTO RX ECM	3	OK 01'10
08/29 21:57			8499	AUTO RX ECM	1	OK 00'46



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 2:10-CV-01087

\$88,029.08, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant.

Katherine Anne Hoover and
John F. Tomasic,

Interested Parties
(No pending criminal charges).

ORDER AND NOTICE

Pending before the Court is the Motion of the United States to Compel Katherine Anne Hoover, M.D., to Appear for a Deposition (ECF No. 83), as amended (ECF No. 89). The interested parties filed a response to this motion (ECF No. 94), and the United States filed a reply (ECF No. 95).

As recited in the original Motion to Compel, the United States served an Amended Notice to Take Deposition upon Dr. Hoover, for her appearance in Charleston, West Virginia, at the United States Attorney's Office on July 12, 2011. On July 11, 2011, Dr. Hoover, in a telephone conversation, informed Assistant United States Attorney Westfall that she did not intend to appear for her

deposition on July 12, and on July 12, she did not appear. Dr. Hoover has expressed her opinion that the United States is not entitled to take her deposition because the court lacks subject matter jurisdiction.

The interested parties' response to the government's Motion to Compel, as amended, is to assert, once again, that the court lacks subject matter jurisdiction. The response was probably filed before the interested parties received Judge Copenhaver's Memorandum Opinion and Order entered August 8, 2011.

By Memorandum Opinion and Order entered April 12, 2011 (ECF No. 53), the presiding District Judge rejected the interested parties' repeated and baseless claims that the court lacks subject matter jurisdiction. That ruling was reiterated in the Memorandum Opinion and Order entered August 8, 2011 (ECF No. 93, at 9-13), and the interested parties were warned that "any future challenge to subject matter jurisdiction in this court will be dealt with summarily and perhaps suggest the imposition of appropriate sanctions"). (ECF No. 93, at 13 n.3.)

The government's reply argues that "[s]ince Dr. Hoover has no legitimate basis to refuse to submit to a deposition in this civil forfeiture action, she is not entitled to refuse to participate in the discovery process, particularly to refuse to appear for a deposition." (ECF No. 95, at 2.) The undersigned agrees.

The United States has acted charitably toward Dr. Hoover by

moving to compel. Pursuant to Rule 37(d)(1)(A), Federal Rules of Civil Procedure, the government could have skipped the motion to compel and filed a motion for sanctions. That rule provides as follows:

The court where the action is pending may, on motion, order sanctions if: (i) a party . . . fails, after being served with proper notice, to appear for that person's deposition

Rule 37(d)(3) specifies the types of sanctions which may be imposed for failing to appear for a deposition. In addition to an order requiring the person "to pay the reasonable expenses, including attorney's fees, caused by the failure," the court may impose any of the sanctions listed in Rule 37(b)(2)(A)(i)-(vi).

It is hereby **ORDERED** that the Motion to Compel, as amended, is granted, and it is further **ORDERED** that interested party Katherine Anne Hoover, M.D. shall appear at the office of the United States Attorney, 300 Virginia Street East, Room 4000, Charleston, West Virginia, on Tuesday, August 30, 2011, at 10:00 a.m., Eastern Daylight Time, and shall testify at her deposition in this action, pursuant to the provisions of Rule 30, Federal Rules of Civil Procedure.

Interested party Katherine Anne Hoover, M.D. is hereby placed on **NOTICE** that should she fail to appear and testify as ordered, she will be subjecting herself to the imposition of sanctions, as specified in Rule 37, which may include one or more of the following:

1. Entry of an order requiring her to pay the reasonable expenses, including attorney's fees, caused by her failure to appear on July 12, 2011 and August 30, 2011;
2. Entry of an order that designated facts (such as those set forth in the Verified Complaint of Forfeiture) be taken as established for purposes of the action;
3. Entry of an order prohibiting Katherine Anne Hoover, M.D. from opposing the claims of the United States;
4. Entry of an order prohibiting Katherine Anne Hoover, M.D. from introducing designated matters in evidence;
5. Entry of an order striking pleadings in whole or in part, such as Katherine Anne Hoover's verified response to the complaint (ECF No. 20);
6. Entry of an order staying further proceedings until the order is obeyed;
7. Entry of an order rendering default judgment against Katherine Anne Hoover;
8. Entry of an order treating as contempt of court the failure to obey this Order granting the Motion to Compel, as amended.

The Clerk is directed to transmit this Order to counsel of record and to provide a copy to the Interested Parties Hoover and Tomasic via fax transmission to 242-328-4014 or, alternatively, by Federal Express.

ENTER: August 12, 2011


Mary E. Stanley
4 United States Magistrate Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No. 2:10-1087
(Lead action)

\$88,029.08, More or Less,
in United States Currency,

ORDER

The court has received today the filing by interested parties Katherine A. Hoover, M.D., and John F. Tomasic styled "NOTICE REGARDING FIFTH AMENDMENT ('notice')." ."

The notice appears to offer a putative blanket invocation of Dr. Hoover's Fifth Amendment privilege in an attempt to excuse her from appearing at her upcoming deposition. Dr. Hoover asserts that, in light of her attempted invocation, she "will not be present for any deposition scheduled by the United States Attorney" (Not. at 1).

The court of appeals addressed a similar situation in North River Ins. Co., Inc. v. Stefanou, 831 F.2d 484 (4th Cir. 1987). In Stefanou, defendant Stefanou and his client Edward Markowitz were alleged by the plaintiff insurer to have conspired to create more than \$500,000,000.00 in fraudulent tax deductions for investors. The plaintiff insurer asserted that they then

been improperly invoked and granted the plaintiff insurer's motion.

In affirming that ruling, the court of appeals observed as follows:

The privilege against self-incrimination, one of our most cherished fundamental rights, is jealously guarded by the courts. It protects an individual not only from involuntarily becoming a witness against himself in a criminal proceeding but also from answering specific allegations in a complaint or filing responses to interrogatories in a civil action where the answers might incriminate him in future criminal actions. But for one to invoke this privilege the party claiming it must not only affirmatively assert it, he must do so with sufficient particularity to allow an informed ruling on the claim. Under the circumstances of this case, a blanket refusal to answer or respond was not sufficient.

Stefanou incorrectly argues that the district court erred in failing to pierce his blanket assertion of privilege to determine its relative merits. A party wishing in good faith to assert the privilege must do so "with respect to particular [allegations]," thereby allowing the trial judge to determine the propriety of each refusal. The privilege also may be asserted and preserved in the course of discovery proceedings, Fed.R.Civ.P. 26(c), but in specifics sufficient to provide the court with a record upon which to decide whether the privilege has been properly asserted as to each question.

Id. at 486-87 (emphasis added) (citations omitted); see also 8 Charles A. Wright et al., Federal Practice and Procedure § 2018 (3rd ed. elec. 2011) ("If a deposition is sought, the

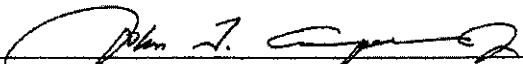
please state your name for the record." (Not. at 1).

availability of the privilege is not a ground for vacating the notice of the deposition. The proper procedure is for the deponent to attend the deposition, to be sworn under oath, and to answer those questions he or she can answer without running a risk of incrimination. In this way a record can be made and the court can determine whether particular questions asked did entitle the deponent to claim the privilege.") (footnote omitted).

Dr. Hoover's blanket assertion prevents the court from making an informed ruling on her claim. It is, accordingly, ORDERED that Dr. Hoover appear at her deposition as directed by previous orders of the court, invoke the privilege in the manner she wishes, and consequently make a sufficient record on the matter in the event further development becomes necessary.

The Clerk is directed to forward copies of this order to (1) all counsel of record via the CM/ECF system, and (2) any unrepresented parties by facsimile and priority overnight delivery.

DATED: August 25, 2011



John T. Copenhaver, Jr.
United States District Judge